

ESTTA Tracking number: **ESTTA485615**

Filing date: **07/26/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

| | |
|---------------------------|---|
| Proceeding | 91205829 |
| Party | Defendant Poiesis Medical, LLC |
| Correspondence Address | CARL J. SPAGNUOLO MCHALE & SLAVIN, P.A. 2855 PGA BLVD PALM BEACH GARDENS, FL 33410-2910 ustrademarks@mchaleslavin.com |
| Submission | Answer |
| Filer's Name | Carl J. Spagnuolo |
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| Signature | /Carl J. Spagnuolo/ |
| Date | 07/26/2012 |
| Attachments | ANSWER91205829.PDF (3 pages)(49038 bytes) |

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

| | | |
|-----------------------|---|-------------------------|
| C.R. BARD, INC., |) | |
| |) | |
| Opposer, |) | |
| |) | |
| v. |) | Opposition No. 91205829 |
| |) | Serial No. 85/505,738 |
| POIESIS MEDICAL, LLC, |) | Mark: DUETTE |
| |) | |
| Applicant. |) | |
| |) | |

APPLICANT'S ANSWER TO NOTICE OF OPPOSITION

Applicant, Poiesis Medical, LLC responds to the Notice of Opposition as follows:

1. Applicant lacks sufficient knowledge at this time to admit or deny, and therefore DENIES the same and demands strict proof thereof of the allegations in Paragraph 1 of the Notice of Opposition.
2. Applicant acknowledges printouts from the USPTO's TARR and Assignment databases for the stated registration, No. 3,781,733 but lacks sufficient knowledge at this time as to any of the other allegations set forth in Paragraph 2 to admit or deny and therefore DENIES the same and demands strict proof thereof.
3. Applicant lacks sufficient knowledge at this time to admit or deny, and therefore DENIES the same and demands strict proof thereof of the allegations in Paragraph 3 of the Notice of Opposition.
4. Applicant lacks sufficient knowledge at this time to admit or deny, and therefore DENIES the same and demands strict proof thereof of the allegations in Paragraph 4 of the Notice of Opposition.

5. ADMIT.

6. DENIED.

7. DENIED. Applicant's goods, as identified in the application, under the trademark DUETTE, are distributed in and through dissimilar channels of commerce and/or sold and/or rendered to dissimilar classes of purchasers of Opposer's goods sold under Opposer's DUET mark.

8. ADMIT.
9. DENIED.
10. DENIED.
11. DENIED.
12. DENIED.
13. DENIED.
14. DENIED.

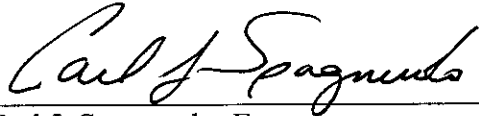
AFFIRMATIVE DEFENSES

15. Applicant's date of first use in commerce pre-dates Opposer's stated date of first use in commerce (July 13, 2009).

16. The "DUET" mark has become diluted due to multiple registrations representing medical products and services, all in International Class 010.

WHEREFORE, Applicant requests that the Opposition to Applicant's trademark application, Serial No. 85/505,738 be denied.

Respectfully submitted,



Carl J. Spagnuolo, Esq.
McHale & Slavin, P.A.
Attorneys for Poiesis Medical, LLC
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561-625-6575 -phone; 561-625-6572 - fax

Dated: July 26, 2012

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing “**APPLICANT’S ANSWER TO NOTICE OF OPPOSITION AND AFFIRMATIVE DEFENSES**” was mailed by First Class Mail, postage prepaid, to Roberta S. Bren, Esq., at Oblon, Spivak, McClelland, Maier & Neustadt, LLP, 1940 Duke Street, Alexandria, VA 22314 on this 26th day of July, 2012.

A handwritten signature in cursive script, reading "Carl J. Spagnuolo", written over a horizontal line.

Carl J. Spagnuolo
McHale & Slavin, P.A.